IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
MISC. CIVIL APPLICATION NO.43 OF 2005

Neelam Dadasaheb Shewale Applicant

Vs.

Shri Dadasaheb Bandu Shewale & anr. Respondents

Applicant in person.
Ms.S.Jayakar Lalwani for respondent no.1.

CORAM: B.H.MARLAPALLE,J.
June 22, 2005.

ORAL ORDER:

1. This application is filed for transfer of M.J. Petition No.A/1633 of 1997 presently pending before the Family Court at Mumbai, to the Competent Court at Pandharpur in Solapur District. The petition has been filed by the husband who has filed affidavit-in-reply and opposes this application for transfer at this belated stage.

2. The parties were married sometime in 1995 and they stayed together for a short period of few months. There is no issue from the marriage and as per the husband, they are separated since 27-1-1996. The applicant-wife had filed Hindu Marriage Petition No.28 of 1996 seeking a decree for restitution of conjugal rights and it was dismissed on 13-3-1997.

The said decision was questioned in Appeal No.35 of 1997 before the District Court and it was dismissed on 20-2-2001. Writ Petition No.4527 of 2001 was filed before this Court challenging the orders passed by the Courts below and the said writ petition was dismissed on 25-9-2001.

3. The husband further points out that the present transfer application is the fifth in series of transfer applications. The earlier four transfer applications are as under:

(i) MCA Stamp No.35156 of 2001 - Disposed off by the Additional Registrar.

(ii) MCA No.12 of 2002 - rejected by this Court on 21-3-2002.

(iii) MCA No.69 of 2002 decided on 20-8-2002.

(iv) MCA No.12 of 2005 - Decided on 5-4-2005.

The wife had also taken out an application in M.J.

Petition No. A/1633 of 1997 for stay to the said proceedings on the ground that the amount of arrears of maintenance and travelling allowance was not paid. She had claimed arrears of Rs.41,350/-. The said application was decided and the Family Court came to the conclusion that the amount due and payable to the applicant-wife was Rs.9390/- vide order dated 30-5-2003. This order came to be challenged in Writ Petition No.4182 of 2003 which was dismissed on 17-1-2005.

4. So far as the prayer for transfer is concerned this Court had rejected the MCA No. 12 of 2002 on merits. The applicant-wife filed the fourth application for transfer in terms of MCA No.12 of 2005 and it was decided on 5-4-2005. This Court disposed of the said application by the following order:

> "(i) Misc.Appln. is dismissed as not pressed. No order as to costs.
>
> (ii) If the Application for review of order dated 2nd August 2002 is not on record of Petition No.A.1633 of 1997, the learned Trial

Judge will take a copy of the said Application on record and by treating the said application as filed on 29-8-2002, she will decide the same as expeditiously as possible and in any event on or before 6th May, 2005. The learned Trial Judge will also dispose of the Application at Exhibit 65 on or before 6th May, 2005. Both the parties are directed to co-operate with the learned Trial Judge for disposal of the said Applications as per the directions issued today.

(iii) The learned trial Judge will postpone the cross examination of the Respondent till application at Exhibit 65 is finally decided. It is made clear that after the Application at Exhibit 65 is decided, the learned Judge will proceed to record cross examination of the Respondent as the hearing of the petition before the trial Court is already expedited by this Court."

5. As directed by this Court the application for review of the order dated 2-8-2002 has been decided

by the learned Judge of the Family Court and rejected on 5-5-2005. Hence this fresh application, on the ground that the applicant's mother is paralytic patient and her presence to attend to the ailing mother is required at Pandharpur. It is required to be noted that the Court has already directed the husband to pay the travelling expenses on submission of the bus tickets. The affidavit submitted by the husband stated that the applicant had submitted claims for reimbursement of travel expenses and when the Court ordered to investigate the bus tickets in support of its claim by examining the travel agent, thereafter the applicant-wife did not claim any reimbursement of travel expenses. In para 5 of the affidavit-in-reply submitted by the husband, he has clearly stated that the applicant wife is not residing at Pandharpur as at present and in fact she is residing at Mahim, Mumbai along with one B.S.Rath. Though rejoinder to the said reply has been filed today, there is no denial to the contention of the husband that the wife presently stays at Mahim. Section 21-A of the Hindu Marriage Act, 1955 deals with the power to transfer petitions in certain cases. The said section reads as under:

"**21-A. Power to transfer petitions in certain cases:-** (1) Where -

(a) a petition under this Act has been presented to a district Court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district Court or in a different district Court, in the same State or in a different State,

the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies, -

(a) if the petitions are presented to the same district Court, both the petitions shall be tried and heard together by that district Court;

(b) if the petitions are presented to different district Courts, the petition presented later shall be transferred to the district Court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district Court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the Court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908, to transfer any suit or proceeding from the district Court in which the later petition has been presented to the district Court in which the earlier petition is pending, shall

> exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code."

This is not an application which attracts the provisions of Section 21-A(2)(b). The applicant-wife claims that it is for her convenience that the pending petition before the Family Court at Mumbai deserves to be transferred to the competent Court at Pandharpur.

6. The petition before the Family Court has been pending for about 8 years, several rounds have been made to this Court from the orders emanating from the said proceedings. It has been pointed out by the husband that the proceedings pending in the Family Court are in an advanced stage i.e. evidence of the parties has been recorded and the arguments have been advanced. The additional ground made out in this application was also raised in MCA No.12 of 2005 and in any case when the proceedings are at an advanced stage and pending for more than 8 years. The husband has stated that he is a part of the Mumbai Police Froce and he would find it difficult to get leave to attend to the Court at Pandharpur. The comparative harship is in favour of the husband. In the facts

and circumstances of this case, it would not be expedient to invoke the powers of transfer under Section 24 of CPC, more so when the proceedings are in an advanced stage.

7. In the result this application fails and the same is hereby rejected.

(B.H.MARLAPALLE,J.)